

Burl Maupin - Re: Fw: SMS Access

From: Steven Stout
To: Andrews.David@epamail.epa.gov; Heath.Melissa@epamail.epa.gov
Date: 5/12/2010 1:16 PM
Subject: Re: Fw: SMS Access
CC: Huyser.Matthew@epamail.epa.gov; Maupin, Burl; Negron.Jose@epamail.epa.gov; Powell, Robert

Ms. Heath,

Thanks for speaking to me by phone yesterday. As we discussed in that telephone conversation, EPA has not - and will not - as a policy matter accepted what the State finds as an acceptable approach under state law for access. More specifically, the State Director of the Division of Remediation wrote a letter in 2006 designating EPA as an agent of the State for purposes of Tenn. Code Ann. 68-212-216 which gives TDEC the authority to access property in exercise of state "police powers". Greg Luetscher told me that EPA would not proceed to enter the property on this basis. Rather, there were a series of fruitless conversations with the widow of Daniel Johnson and then - and I am not clear which - an Administrative Order or an agreement signed by one of the presumed heirs (adult children of Johnson) who would hold an undivided interest in the property by Tennessee laws of intestate succession. And then the complication is that the order or agreement had a limited term that ended last Nov. 2009. Based on EPA investigation done by Luetscher, there was no administration of the decedent's estate.

In terms of "escheat", I seriously doubt that this would happen without some affirmative action by the state and there is no evidence of which I am aware that the state has filed a proceeding to acquire title to this abandoned real estate. I agreed to seek advice from the state AG on the escheat process. Again, the problem with the "letter to the effect that the state can grant access" is that we have already sent EPA such a letter in June 2006. But EPA would not accept a letter based on the state's exercise of its statutory authority. However, EPA would accept a letter based on state ownership of the property through escheat. And, again, I am inquiring as to how that process works.

Also, Burl Maupin has identified that there are 4 properties needed for access - only two of these are related to Daniel Johnson, the deceased former owner.

In about a day and a half, I have become aware of this issue and am willing to assist. But there is considerable confusion evident on the state side as to what role the state needs to play. Please define what role I need to play and for Burl Maupin and for Bob Powell in our Nashville Central Office. One option would be for the state to issue an administrative order to assert our rights under 68-212-216 to the known Johnson heirs and provide that our authority includes EPA.

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>>> <Heath.Melissa@epamail.epa.gov> 5/11/2010 2:51 PM >>>
if we could get a letter to the effect that the state can grant access,
that would be great. is there any evidence that the state has accepted
title by escheat? that is the principle by which the state gains
ownership of abandoned property, and the state law provides that can
happen if the heirs refuse ownership or abandon the property for 5
years. if that has happened, that would greatly simplify life!

acquiescence by mr witherspoon over his property is not the same as
access to this property.

thanks! - melissa

Melissa Allen Heath
Associate Regional Counsel
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From: David Andrews/R4/USEPA/US
To: Melissa Heath/R4/USEPA/US@EPA
Cc: Matthew Huyser/R4/USEPA/US@EPA, Jose Negron/R4/USEPA/US@EPA
Date: 05/11/2010 03:36 PM
Subject: Fw: SMS Access

FYI

----- Forwarded by David Andrews/R4/USEPA/US on 05/11/2010 03:35 PM

From: "Burl Maupin" <Burl.Maupin@tn.gov>
To: David Andrews/R4/USEPA/US@EPA
Date: 05/11/2010 03:00 PM
Subject: Re: SMS Access

It is my understanding that since the owner of two parcels is dead and
no one will claim the property, the State had the authority to grant EPA

access to these parcels (including the building and most, but not all, the waste). There should be a letter to this effect. I haven't been able to locate it.

Some waste to the extreme south is on property owned by the Rimmer Brothers. I have several drafts of a letter of agreement to be signed by TDEC and Rimmer Bros., but I do not have one with signatures.

At our present entryway, we have been going across a small parcel owned by Maryville Pike Properties. David Witherspoon has given verbal permission for entry here. That may not be good enough?

>>> <Andrews.David@epamail.epa.gov> 5/11/2010 11:53 AM >>>

Melissa, I believe that we have legal access to the Smokey Mountain Smelters Site.

Matt, Jose & Burl - Chime-In if y'all agree...

Thanks,

David